diction Act, 1879, which authorizes the annulling of the old and the substitution of the new forms.

The Court held that the contention failed. Lord Alverstone, L. C. J., Hamilton, J., and Avory, J., all agreed that, assuming the summons to be defective or irregular for want of a seal, the defect or irregularity was cured by the proviso to section 1 of the Act of 1848 that "no objection shall be taken or allowed to any information, complaint or summons from any alleged defect thereon in substance or in form." The Lord Chief Justice and Hamilton, J., considered that the presence of [L. S.] on the new form was an implied direction to seal the summons or that sealing was still obligatory; Avory, J. considered the use of a seal on a summons to be no longer obligatory. The deliberate omission of the words "under seal" seems to us to negative the implication drawn by the majority of the judges from the presence of the [L. S.]—London Law Journal.

Prisoner Whipped to Death.—Let us hope that the case in 131 Southwestern Reporter, 969, is not a fair example of the treatment administered to convicts in every prison, but rather only the exception. The title is Tillar *v.* Reynolds. One Reynolds was convicted of a misdemeanor, and sent to the convict farm of Tillar, where he was placed under the custody of the warden. On a certain morning, because of some misconduct, the warden compelled Reynolds to remove his clothing and lie down across a log, face downward, where he was held by other men. With a leather strap about 30 inches long, 4 inches wide, and three-fourths of an inch thick, fastened to a staff, the warden then cruelly beat him across the small part of his back, using both hands to wield the blows. After this barbarous cruelty the prisoner was sent out into the hot sun of a day in July, and compelled to work until he reeled and staggered like a drunken man, when he was sent from the field groaning with pain. He was given no medical attendance, and died early that evening. Deceased was 31 years old, left a young widow with three little children, aged 3, 6, and 7, who bring this action against the owner of the convict farm. The Supreme Court of Arkansas holds that defendant is liable for the conduct of the warden his agent, because the whipping was within the scope of his authority, though in excess of the prison rules. A verdict of $3,750 was affirmed.

Injuries from Cranking an Automobile.—A case which has caused considérable comment is that of Fisher *v.* McGrath, 128 Northwestern Reporter, 579. Plaintiff, a young lady, was driving a buggy drawn by a gentle horse along a country road, when at a short distance ahead she saw an automobile standing stationary, and defendant on his knees looking at it. Having no reason to anticipate any trouble she kept on her way, and when opposite the machine

defendant, without giving any warning, suddenly started his motor, which caused the usual and familiar nerve-wrecking noise made by an automobile when cranked. The horse was frightened and whirled to the left, throwing plaintiff into the ditch and seriously injuring her. The lower court, on motion, dismissed the action on the ground that the evidence showed no negligence on defendant's part. The Supreme Court of Minnesota agrees with the trial judge that defendant had a right to stop his automobile for a reasonable time to adjust it, and that the mere fact of starting it was no evidence of negligence; but this was not the negligence charged in the complaint, which alleged that the automobile was suddenly set in motion without warning to the plaintiff. The court holds that the failure to warn plaintiff of his intention to start the motor is the gist of the cause of action, and that this negligence was a question for the jury. The lower court having erred in not submitting the case to the jury, a new trial was granted.

MISCELLANY.

A Eulogy over the Jury System.—In these times when the ancient and honored jury system seems to be the butt of so much adverse criticism, the following eulogy from the Lone Star State will be welcomed by its stanch but diminishing defenders: "The institution of jury trial has, perhaps, seldom or never been fully appreciated. It has been often eulogized in sounding phrase, and often decried and derided. An occasional corrupt, or biased, or silly verdict is not enough for condemnation; and when it is said the institution interposes chances of justice and checks against venality and oppression, the measure of just praise is not filled. Its immeasurable benefits, like the perennial springs of the earth, flow from the fact that considerable portions of the communities at stated periods are called into the courts to sit as judges of contested facts, and under the ministry of the courts to apply the laws. There the constitution and principles of the civil code are discussed, explained and enforced, and the jurors return into the bosom of society instructed and enlightened, and disseminate the knowledge acquired; and do we not perceive, without farther illustration, that owing to these nurseries of jurisprudence and of the rights of man, more than to all other causes, the Anglo-Saxon race has been preeminent for free institutions and all the political, civil and social virtues that elevate mankind! Let us then preserve and transmit this mode of trial not only inviolate, but if possible, purified and perfected." Bailey *v.* Haddy, Dallam (Tex.) 376, 380.